

CHAPTER 9

HISTORICALLY UNDERUTILIZED BUSINESS ZONE (HUBZone)

A. HISTORICALLY UNDERUTILIZED BUSINESS ZONE (HUBZone) PROGRAM

The Historically Underutilized Business Zone (HUBZone) Act of 1997 (15 U.S.C. 631) Title VI of Public Law 105-135 created the HUBZone Empowerment Contracting Program. The purpose of the HUBZone Program is to provide Federal contracting assistance for qualified small business concerns located in historically underutilized business zones, in an effort to increase employment opportunities, investment, and economic development in those areas.

The Federal Acquisition Regulation (FAR) 19.13 requires that HUBZone small business concerns must be certified by the Small Business Administration and be listed in SBA's PRONet database. To find out if a company is located in a HUBZone simply log onto the web at <http://www.sba.gov/hubzone> and select the option 'Find Out If You Are in a HUBZone'.

B. HOW THE HUBZone PROGRAM WORKS

The US Small Business Administration (SBA) regulates and implements the program and:

- Determines which businesses are eligible to receive HUBZone contracts,
- Maintains a listing of qualified HUBZone small businesses that Federal agencies can use to locate vendors,
- Adjudicates protests of eligibility to receive HUBZone contracts, and
- Reports to the Congress on the program's impact on employment and investment in HUBZone areas.

Eligibility Criteria for the Program

A small business must meet all of the following criteria to qualify for the HUBZone Program:

- It must be a small business by SBA Size standards.
- Its principal office must be located within a HUBZone, which includes lands on federally recognized Indian reservations.
- It must be owned and controlled by one or more U.S. Citizens, and
- At least 35% of its employees must reside in a HUBZone (an employee may reside in one HUBZone and work in another and still meet the residency standards).

A “HUBZone” is an area that is located in one or more of the following:

- A qualified census tract (as defined in section 42(d)(5)©(I)(1) of the Internal Revenue Code of 1986).
- A qualified “non-metropolitan county” (as defined in section 143(k)(2)(B) of the Internal Revenue Code of 1986) with median household income of less than 80 percent of the State median household income or with an unemployment rate of not less than 140 percent statewide average, based on U.S. Department of Labor recent data; or
- Lands within the boundaries of federally recognized Indian reservations.

C. BENEFITS SMALL BUSINESS RECEIVE UNDER THE PROGRAM INCLUDE:

1. Federal Contract Benefits

There are four types of HUBZone contract opportunities:

Competitive

A competitive HUBZone contract can be awarded if the contracting officer has a reasonable expectation that at least two qualified HUBZone small businesses will submit offers and that the contract can be awarded at a fair market price.

HUBZone Sole Source Awards

A contracting officer may award contracts to small business concerns on a sole source basis without considering a small business set-aside. A sole source HUBZone contract can be awarded if the contracting officer does not have a reasonable expectation that two or more qualified HUBZone small businesses will submit offers, determines that the qualified HUBZone is responsible, and determines that the contract can be awarded at a fair price. The government estimate cannot exceed \$5 million for manufacturing requirements or \$3 million for all other requirements with any NAICS Code. SBA has the right to appeal the contracting officer’s decision not to make a HUBZone sole source award. The contracting officer shall insert the Clause 52.219-3, Notice of Total HUBZone Set-Aside in contracts for acquisitions that are set aside for small business concerns under FAR 19.1305 or 19.1306.

Full and Open Competition

A full and open competition contract can be awarded with a price evaluation preference of 10 percent. The offer of the HUBZone small business will be considered lower than the offer of a non-HUBZone/non-small business providing that the offer of the HUBZone small business is not more than 10 percent higher. The contracting officer shall insert Clause at FAR 52.219-4, Notices of Price Evaluation Preference for HUBZone Small Business Concerns, in solicitations and contracts for acquisitions conducted using full

and open competition. The clause shall not be used in acquisitions that do not exceed the simplified acquisition threshold.

Price Evaluation Factor

The price evaluation preference for HUBZone small business concerns shall be used in acquisitions conducted using full and open competition. The preference shall not be used (1) in acquisitions expected to be less than or equal to the simplified acquisition threshold; (2) where price is not a selection factor so that price evaluation would not be considered (e.g. Architect/Engineer acquisitions), and (3) where all fair and reasonable offers are accepted) (e.g. the award of multiple award schedule).

The contracting officer shall give offers from HUBZone small business concerns a price evaluation preference by adding a factor of 10 percent to all offers, except (1) offers from HUBZone small business that have not waived the evaluation preference; (2) otherwise successful offers from small business concerns; (3) otherwise successful offers of eligible products under the Trade Agreements Act when the acquisition exceeds the dollar threshold and (4) otherwise successful offers where application of the factor would be inconsistent with a Memorandum of Understanding or other international agreements with a foreign government.

Simplified Acquisitions

FAR Part 13.003(2) states that contracting officers may set aside for HUBZone small business concerns an acquisition of supplies or services that has an anticipated dollar value exceeding \$2,500 and not exceeding the simplified acquisition threshold. The contracting officer's decision not to set aside an acquisition for HUBZone participation below the simplified acquisition threshold is not subject to review by the SBA as stated in Subpart 19.4. Contracting officers should always consider HUBZone contractors for acquisitions under the simplified acquisition threshold in accordance with the order of precedence (see paragraph D below).

Subcontracting Goals

All subcontracting plans for large business Federal contractors must include a HUBZone subcontracting goal.

HUBZone Set-Aside-Awards

Set-Asides for HUBZone small business concerns take precedence **over everything** with the exception of the following items: (FAR 19.304 & SBA 13CFR126.605).

- Federal Prison Industries, Inc. (Subpart 8.6);
- Javits-Wagner-O'Day Act participating non-profit agencies for the blind or severely disabled (Subpart 8.7);
- Orders under indefinite delivery contracts (Subpart 16.5);

- Orders against Federal Supply Schedules (Subpart 8.4);
- Requirements currently being performed by an 8(a) participant or requirements that SBA has accepted for performance under the authority of the 8(a) Program, unless SBA has consented to release the requirement from the 8(a) Program;
- Requirements that do not exceed the micro-purchase threshold; or
- Requirements for commissary or exchange resale items.

The Contracting Officer (CO) **shall** set aside acquisitions exceeding the simplified acquisition threshold for competition restricted to HUBZONE small business concerns when the CO has a reasonable expectation that: (FAR 19.305 & SBA 13CFR126.607)

- offers will be received from two or more HUBZONE small business concerns, and
- award will be made at a fair and reasonable price.

The CO shall consider HUBZONE set-asides before considering HUBZONE sole source awards (19.306) or small business set-asides (19.5)

Based on the SBA's written guidance, the Order of Precedence applies to all acquisitions; incumbent efforts as well as, new acquisitions. If the Contracting Officer is not aware of any qualified HUBZONE firms, then the recommended approach is to issue a "Sources Sought". HUBZONE companies must be qualified to perform the effort, as determined by the program office and the Contracting Officer. If the Contracting Officer determines that no qualified HUBZONE firms exist, then the effort may be issued as a small business set-aside.

Sole Source HUBZones Awards

The CO **may** award contracts to HUBZONE small business concerns on a sole source basis (FAR 19.306 and SBA 13CFR126.609) without considering small business set-asides, provided:

1. Only one HUBZONE can satisfy the requirement;
2. The anticipated price, including options will not exceed \$5M for manufacturing and \$3M for services;
3. **The requirement is not currently being performed by a non-HUBZONE small business concern; ***
4. The acquisition is greater than the simplified acquisition threshold;
5. The HUBZone concern has been determined to be a responsible contractor with respect to performance; and
6. Award can be made at a fair and reasonable price.

SBA has the right to appeal the CO decision not to make a HUBZone sole source award.

HUBZone sole source awards are discretionary on the part of the CO. However, if a non-HUBZone small business concern is currently performing the requirement that requirement remains in the small business set-aside program.

**This language only appears in the FAR and not in the SBA regulations.*

2. Other Specialized Assistance

Eligible HUBZone firms can qualify for higher SBA-guaranteed surety bonds on construction and service contract bids.

Firms in Federal Empowerment Zones and Enterprise Communities (EZ/EC) can also benefit from employer tax credits, tax-free bonds, and investment tax deductions

D. SMALL BUSINESS ORDER OF PREFERENCE

8(a) Program
HUBZone Set-Aside
HUBZone Sole Source
Service-Disabled Veteran Business Set-Aside
Service-Disabled Veteran Business Sole-Source
Small Business Set-Aside
Full and Open Competition

E. GOALING

The Small Business Reauthorization Act of 1997 increases the overall government-wide procurement goal for small business from 20% to 23%. The statute sets the goal for HUBZone contracts as follows: 2001 - 2% - 2002 – 2 ½%; 2003; and each year thereafter – 3%.

F. AFFECTED AGENCIES

As of October 1, 2000 all Federal Agencies are subject to the requirements of the HUBZone Program.